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### Towards a sustainable recovery

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## **Towards a Sustainable Recovery: Perspectives from the Recent Literature on International Marine Environmental Law**

### **Review Essay**

Daud Hassan and MD Saiful Karim (eds), *International Marine Environmental Law and Policy* (Abingdon/New York, Routledge), 2018, ISBN: 9781138651135, softbound, £46.99, xii + 264 pp.

Markus Kotzur, Nele Matz-Lück, Alexander Proelss, Roda Verheyen, and Joachim Sanden (eds), *Sustainable Ocean Resource Governance: Deep Sea Mining, Marine Energy and Submarine Cables* (Leiden/Boston, Brill Nijhoff), 2018, ISBN: 978900436266, hardbound, €146, xiii + 283 pp.

Myron H Nordquist, John Norton Moore and Ronán Long (eds), *The Marine Environment and United Nations Sustainable Development Goal 14: Life Below Water* (Leiden/Boston, Brill Nijhoff), 2019, ISBN: 9789004364202, hardbound, €159, xiii + 421 pp.

2020 has seen the world facing global health and economic crises brought about by the COVID-19 pandemic. However, as we enter 2021 and the hope of a vaccine to tackle the virus is on the horizon, attention is now beginning to turn to recovery. It is widely acknowledged that returning to ‘normal’ may not be an option, because even before the pandemic struck, the world was in the midst of what were described as climate change and biodiversity emergencies.<sup>1</sup> It would therefore appear to be accepted that we need to grow back our economies in a more sustainable manner. This was clearly recognized by the leaders of the G20 nations at their November 2020 summit, where they acknowledged that, as their countries recovered from the pandemic, it was necessary to ‘[build] a more sustainable and inclusive future for all people’.<sup>2</sup>

The response to these ecological emergencies requires action on a number of fronts. On the one hand, the planet is warming at an unprecedented rate, in large part due to anthropogenic emissions, and we will reach a critical tipping point unless urgent action is taken. The Paris Agreement represents the legal framework through which the international community will reduce greenhouse gas emissions and the upcoming 26th Conference of the Parties to be held in Glasgow in November 2021 is seen as a vital moment for States to commit to adequate mitigation measures in order to achieve the objective of ‘holding the increase of global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C’.<sup>3</sup> 2021 will also see the 15th Conference of the Parties to the Convention on Biological Diversity, which, *inter alia*, will review progress in achieving the so-called Aichi Biodiversity Targets and agree a new post-2020 global biodiversity framework. The fifth Global Biodiversity Outlook was published in September 2020, and it suggests that much more needs to be done, as ‘at the global level none of the 20 [Aichi] targets have been fully achieved’<sup>4</sup> and in some areas there has been a decline in biodiversity over the relevant period. The report concludes that ‘efforts to conserve and restore biodiversity need to be scaled up at all levels’.<sup>5</sup>

The ocean is a critical issue for both of these international regimes. It is clear that climate change and the associated impacts of ocean acidification are having significant effects on the health

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<sup>1</sup> See e.g. UN Environment Press Release, *2020: A crunch year for the biodiversity and climate emergency*, 23 December 2019, available at <https://www.unenvironment.org/news-and-stories/story/2020-crunch-year-biodiversity-and-climate-emergencies>

<sup>2</sup> See Leaders’ Declaration, G20 Riyadh Summit, November 21–22 2020, para. 29.

<sup>3</sup> 2015 Paris Agreement on Climate Change, Article 2(1)(a).

<sup>4</sup> Secretariat to the Convention on Biological Diversity, *Global Biodiversity Outlook 5 – Summary for Policy Makers* (2020) 4.

<sup>5</sup> *Ibid.*, 12.

of marine ecosystems,<sup>6</sup> which are already under pressure from a range of other human activities. In 2015, the First Global Integrated Marine Assessment reported that ‘adverse impacts on marine ecosystems come from the cumulative impacts of a number of human activities’ with ‘the total impact of several pressures on the same ecosystem often being much larger than the sum of the individual impacts’.<sup>7</sup> In particular, the Assessment highlighted the interlinkages of climate change and biodiversity, noting that ‘where biodiversity has been altered, the resilience of ecosystems to other impacts, including climate change, is often reduced’.<sup>8</sup>

The importance of international law in responding to these multiple threats to the World Ocean has received increasing attention in recent years, with the edited collections covered by this review providing some of the latest insights on this topic. Although each of these books appeared before the onset of the pandemic, their contents are even more important in a post-COVID world, where pressure to regrow the economy must be balanced against the need to ensure sustainability. What these volumes demonstrate is the range of scholarship on this important subject, produced by academics and practitioners from across the globe. This short review aims to give a flavour of the topics that are addressed, as well as to highlight certain themes shared between the books.

*International Marine Environmental Law and Policy*, edited by Daud Hassan and MD Saiful Karim, seeks to present a comprehensive overview of the legal responses to protect the ocean from increasing pressure by humankind. The contents of the book cover the range of threats and associated regulatory regimes in a systematic way. It begins with an introduction to the general framework for international marine environmental law before offering individual chapters on particular areas of regulation, namely, pollution from land-based activities; pollution from ships; pollution from offshore hydrocarbon and mineral resource activities; climate change and ocean acidification; marine spatial planning; fisheries management; marine protected areas; indigenous rights; protection of the polar oceans; and dispute settlement. As a result, the volume offers a useful introduction to the subject, although many chapters merely provide an overview of the key legal instruments without too much detailed analysis. The book is therefore suitable for a newcomer to this field, but, with one or two exceptions, it does not engage deeply with how the legal framework may evolve to meet the challenges facing the marine environment. For this, we have to look to the other books being reviewed.

*Sustainable Ocean Resource Governance*, edited by Markus Kotzur, Nele-Matz-Lück, Alexander Proelss, Roda Verheyen and Joachim Sanden, presents the papers that were delivered at the Third Hamburg International Environmental Law Conference in April 2016 under the theme of ‘a sea change for sustainable ocean resource governance’. The book contains both wide-ranging contributions on sustainable use of marine resources in general, as well as a number of contributions relating to two specific fields of regulation, namely, offshore energy (including associated cables and pipelines) and deep seabed mining in the area beyond national jurisdiction. Whilst there are no chapters in the volume dedicated to climate change, it is clear that these two sectors of activity are relevant to that broader framework; offshore renewable energy is likely to be a key means of reducing reliance on fossil fuel for energy generation in the short- term and deep seabed mining has been highlighted as a potential source of several valuable and scarce minerals that are needed to build renewable energy equipment and batteries. At the same time, both of these activities must be carried out sustainably. Whereas there is already a voluminous literature on the environmental regulation of deep seabed mining,<sup>9</sup> renewable energy regulation has received comparatively less attention in the scholarship and so it is an aspect of this collection which is worth particular attention. In this context, the chapter by Gabriele Goettsche-Wanli suggests that this is an area that ‘lack[s] comprehensive regulation, including in relation to responsibility and liability’ (p. 45) and

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<sup>6</sup> See e.g. Intergovernmental Panel of Climate Change, *Special Report on the Oceans and Cryosphere in a Changing Climate* (2019).

<sup>7</sup> See Summary of the First Global Integrated Marine Assessment, UN Document A/70/112, 22 July 2015, para. 38.

<sup>8</sup> Ibid.

<sup>9</sup> See particularly A. L. Jaeckel, *The International Seabed Authority and the Precautionary Principle* (Brill, 2017).

she argues that ‘there is ... a need to foster cooperation and coordination among States and coherence of the legal framework in view of the transboundary nature of some of the technologies involved’ (p. 72). This view is echoed by David Kenneth Leary who focuses on the development of renewable energy in the Pacific and calls for ‘the proper and meaningful implementation of the soft law obligations that have solidified over the past few decades’ (p. 99), thereby highlighting the lack of a ‘hard’ legal framework. In other words, in this particular area, there is a need for more law.

*The Marine Environment and United Nations Sustainable Development Goal 14*, edited by Myron Nordquist, John Norton Moore and Ronán Long, is another collection of conference papers, this time from the 41st annual conference of the Center for Oceans Law and Policy of the University of Virginia School of Law, held in Yogyakarta, Indonesia in May 2017. This volume covers an even wider range of topics, with sections dedicated to the sustainable use of the ocean and its resources (including fisheries); biodiversity of areas beyond national jurisdiction; deep seabed minerals; marine pollution and coastal ecosystems; and climate change and the ocean. It showcases the work of an impressive range of authors, from seasoned diplomats and practitioners who have been active in the law of the sea for decades to academics at an earlier stage in their career who, as the next generation, have a valuable contribution to make to these important debates. As can be expected from the title, many contributions address the role that international law has to play in supporting Sustainable Development Goal 14 relating to ‘life below water’. At the same time, as pointed out by Ronán Long and Mariamalia Rodriguez Chaves in their chapter, it is important to approach the Sustainable Development Goals holistically, and they highlight other goals which are also relevant to the ocean. These authors see the Sustainable Development Goals as a mechanism for understanding the interaction of various disparate processes which are nevertheless working towards the common objective of ‘living in greater harmony with the natural environment and ... meeting the needs of developing countries’ (p. 94). Long and Rodriguez Chaves also emphasize that the Sustainable Development Goals ‘can only be achieved through action and cooperation at local, national, regional and international levels’ (p. 98) and therefore effective implementation of the existing legal instruments relating to the law of the sea, biodiversity and climate change will be critical to success. At the same time, they point out that we cannot rely upon States alone and mobilisation must also occur from the bottom up, with a particular role for academic institutions as ‘agents of change’ through their educational programmes (pp. 107–108). This is an important reminder that an academic’s role is not only as an objective commentator, but also as an active participant in change.

A reoccurring topic in many chapters of *The Marine Environment and United Nations Sustainable Development Goal 14* is the ongoing negotiation of a new internationally legally binding instrument (ILBI) on biodiversity in areas beyond national jurisdiction, yet another major diplomatic process which has been delayed by the COVID-19 pandemic. This is also another area where a gap in the legal framework has been identified, and great hopes are expressed for a new treaty, whilst also recognising that significant divergences between negotiating positions must be overcome and constructive legal solutions will have to be found if the instrument is to achieve consensus. Indeed, Liesbeth Lijnzaard reminds us in her chapter that even the basic objective concerning the ‘conservation and sustainable use of marine biodiversity’ hides some complex considerations, which are likely to elicit different opinions. This underlines that nothing can be taken for granted in these negotiations, which will have significant implications for the future regulation of marine areas beyond national jurisdiction, as well as our ability to achieve sustainability in the ocean realm.

Despite the focus of many of the contributions to these three volumes on specific sectoral regulation (e.g., energy, fishing, mining), a common theme that emerges across all of them is the need for better coordination in the implementation of international rules relating to the protection of the marine environment. For example, the editors to *Sustainable Ocean Resource Governance* point out in their introduction that ‘the sectoral nature of current ocean governance and the existing patchwork of management arrangements for the oceans do not facilitate the search for a coherent

and consistent sustainability approach' (p. viii). Several other authors investigate some of the tools and mechanisms that might be available to achieve such an end. For example, in her contribution to the *Marine Environment and Sustainable Development Goal 14*, Rena Lee explores the lessons that can be learnt from the techniques to promote synergies between treaties employed by other areas of international environmental law, particularly the institutional framework developed under the so-called 'chemicals conventions', namely, the Basel Convention, Stockholm Convention and Rotterdam Convention. She accepts that replication of this framework would not be possible in relation to marine environmental protection 'given the complexities in ocean governance', but nevertheless suggests a number of lessons that can be learnt from the synergies process (pp. 30–32). Niko Soininen and Daud Hassan introduce marine spatial planning as a tool for integrated management of the ocean at the national and regional levels in their chapter in *International Marine Environmental Law and Policy*, highlighting what they consider to be best practices in this area, which again could provide lessons for other States. What these chapters underline is that important lessons can be learned from existing practice and a key role of the literature in this respect is to shine a light on potential models which may be adapted to other contexts. Many authors also point to the contribution that could be made by a new ILBI on biodiversity beyond national jurisdiction, provided that an agreement can be reached. Thus, Robin Warner highlights in her chapter in *Marine Environment and Sustainable Development Goal 14* how 'the UNGA process to develop the ILBI represents an historic opportunity to remediate these gaps [in the legal framework] and create a more cross-sectoral and integrated system of ocean governance which will benefit not only marine biodiversity in ABNJ, but also within national jurisdiction' (pp. 112–113).

Collectively, these three books leave a clear impression that the challenges for protecting the ocean are immense, but the scholarship displays no shortage of ideas for improving practice and instigating reform. Given the complexity of the problems, there is unsurprisingly no single prescription as to what action is needed—some contributions highlight the need for better implementation or enforcement of existing rules, whereas other contributions call for new instruments to fill in gaps in the international legal framework. Yet, what all contributions have in common is the recognition that the status quo is inadequate and further action of some sort is needed. Furthermore, sustained effort, ambition and creativity will be required in order to turn ideas into effective change. In this vein, it is perhaps fitting to finish this review with the words of the late Satya Nandan (1936–2020), who himself had an immense influence on the law of the sea over a number of decades and who in his contribution to *The Marine Environment and United Nations Sustainable Development Goal 14* concluded by remarking: 'I would ask the next generation of lawyers, diplomats and scientists to look past experience and ideology and work together to find common ground to solve problems that imperil the health of the world's oceans' (p. 22).

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